

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 02, 2017

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#1.00 Hearing re [131] Confirmation of the Debtor's Chapter 11 Plan.

fr. 1-4-17

Docket 0

Tentative Ruling:

5/1/2017: For the reasons set forth below, GRANT Motion.

Pleadings Filed and Reviewed

- First Amended Plan of Reorganization:
 - Brief in Support of Confirmation of Individual Debtor's Chapter 11 Plan of Reorganization ("Motion") [Doc. No. 129]
 - Notice of: 1. Hearing to Consider Confirmation of Individual Debtor's Chapter 11 Plan of Reorganization; 2. Time Fixed for Receipt of Ballots Accepting or Rejecting Plan; and 3. Time Fixed for Filing Objections to Confirmation [Doc. No. 123]
 - Analysis of Ballots for Voting on Individual Debtor's Chapter 11 Plan of Reorganization ("Ballot Summary") [Doc. No. 128]
 - Individual Debtor's Amended Chapter 11 Plan of Reorganization ("First Amended Plan" or "FAP") [Doc. No. 131]
 - Individual Debtor's Amended Chapter 11 Plan of Reorganization (Redlined Version) [Doc. No. 132]
 - Monthly Operating Report for the Month Ending March 31, 2017 ("March MOR") [Doc. No. 130]
- First Amended Disclosure Statement:
 - Individual Debtor's Amended Disclosure Statement in Support of Chapter 11 Plan of Reorganization ("First Amended Disclosure Statement" or "FADS") [Doc. No. 121]
 - Submission of Redlined Version of Individual Debtor's First Amended Disclosure Statement in Support of Chapter 11 Plan of Reorganization [Doc. No. 122]

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I. Facts and Summary of Pleadings

Arto Atmadjian ("Debtor") filed the instant Motion, seeking confirmation of the Debtor's proposed First Amended Plan. Doc. No. 129. For the reasons set for below, the Court GRANTS the Motion and CONFIRMS the First Amended Plan.

Background and Procedural History

The Debtor filed a voluntary chapter 7 petition on February 22, 2016 ("Petition"). Doc. No. 1. Jason M. Rund was appointed as the chapter 7 trustee ("Trustee"). The Debtor is an individual and manager of Tala Jewelers, Inc. ("Tala Jewelers") and the Debtor's non-filing spouse, Tina Atmadjian, was previously the 100% shareholder and president of Tala Jewelers. In a separate case, Tala Jewelers filed and obtained confirmation of a chapter 11 plan ("Tala Jewelers Case"), which extinguished Ms. Atmadjian's equity interest. *See* Case No. 2:16-bk-10921-TD. Ms. Atmadjian is currently the sales director of Tala Jewelers. On April 28, 2016, the Trustee filed an employment application to employ Thomas H. Casey ("Casey") as counsel for the Trustee. Doc. No. 32. The Court entered an order granting the employment of Casey on May 17, 2016. Doc. No. 50.

Motion to Convert

The Debtor filed his first motion to convert from Chapter 7 to Chapter 11 on April 19, 2016 ("First Motion to Convert"). Doc. No. 19. The Court denied the First Motion to Convert without prejudice on the grounds that the Debtor did not provide notice of an opportunity to request a hearing pursuant to Local Bankruptcy Rule ("LBR") 9013-1(o). Doc. No. 25. On April 27, 2016, the Debtor filed a second motion to convert ("Second Motion to Convert"). Doc. No. 26. The Court entered an order, granting the Second Motion to Convert on June 28, 2016, and converted the Debtor's case to chapter 11. Doc. No. 70. On August 25, 2016, the Debtor filed an employment application to employ the Takvoryan Law Group ("Takvoryan") as the Debtor's bankruptcy counsel. Doc. No. 89. The Court entered an order granting the employment of Takvoryan on September 15, 2016. Doc. No. 92.

Stay-Relief Motions

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On May 6, 2016, secured creditor Kinecta Federal Credit Union ("Kinecta") filed a motion for relief from the automatic stay as to real property located at 2378 Buckingham Lane, Los Angeles, California 90077 ("Buckingham Property") pursuant to 11 U.S.C. 362 ("Stay-Relief Motion"). Doc. No. 36. On June 28, 2016, the Court denied the Stay-Relief Motion without prejudice so as to allow the Debtor an opportunity to administer the estate as debtor-in-possession. Doc. No. 72. The Court further found that the Debtor did not have a meaningful opportunity to oppose the Stay-Relief Motion because of the recent chapter 11 conversion. *Id.*

On October 4, 2016, Kinecta filed a second Stay-Relief Motion ("Second Stay-Relief Motion") as to the Buckingham Property. Doc. No. 96. The Court denied the Second Stay-Relief Motion, finding that Kinecta was adequately protected under § 362(d)(1) and that the Buckingham Property was necessary to an effective reorganization under the Debtor's plan. Doc. No. 102. The Court also imposed the following deadlines: (1) the Debtor shall file and receive approval of a disclosure statement by no later than January 6, 2017; and (2) the Debtor must confirm a chapter 11 plan of reorganization by no later than March 31, 2017 ("Deadline"). *Id.*

Disclosure Statement

On November 29, 2016, the Debtor filed a disclosure statement, plan, and motion, seeking approval of the disclosure statement as containing "adequate information" within the meaning of 11 U.S.C. § 1125. Doc. Nos. 105-107. The Court held a hearing and conditionally approved the disclosure statement on January 4, 2017. Doc. No. 114 (tentative ruling incorporated by reference herein). The Court subsequently required the Debtor to file an amended disclosure statement by no later than January 20, 2017, incorporating additional information surrounding the deed of Sarkis Nourian ("Nourian") and supporting the Debtor's fair market value of the Buckingham Property, in order to receive approval. Doc. No. 117. Furthermore, the Court extended the Deadline and set a hearing on the Debtor's approval for a plan of reorganization for May 2, 2017. *Id.*

First Amended Disclosure Statement and Plan

On January 20, 2017, the Debtor filed the First Amended Disclosure Statement. Doc. Nos. 121, 122 (redlined version). Subsequently, the Debtor filed the

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First Amended Plan on April 19, 2017. Doc. Nos. 131, 132 (redlined version). Although the Debtor filed the First Amended Plan after the Ballot Summary, the redlined version of the First Amended Plan reflects only minor changes to the Franchise Tax Board's ("FTB") claim and a few grammatical, non-material amendments. The effective date of the Plan ("Effective Date") will be the first day of the first full month that is at least eleven (11) days following the entry of the order confirming the Plan. FAP at 1. The deadline for creditors of the Debtor to file proof of claims occurred on February 10, 2017. Doc. No. 116.

The Debtor lists the following administrative claims: (1) the Clerk's Office Fees, in the estimated amount of \$0, to be paid full on the Effective Date, (2) the Office of the U.S. Trustee Fees, in the estimated amount of \$0, to be paid in full on the Effective Date; (3) Takvoryan, in the estimated amount of \$40,000, to be paid in full upon the entry of a final order approving Takvoryan's fees and expenses; and (4) Casey in the amount of \$30,484.81 as stated in Claim No. 9-1, to be paid in full upon the entry of a final order approving Mr. Casey's fees. FAP at 3.

The Debtor lists the following priority tax claims: (1) the Internal Revenue Service ("IRS"), in the amount of \$44,107.07 as stated in Claim No. 5-2, to be paid with an initial \$10,000 on the Effective Date and monthly payments at 4% per annum of \$1,006.00 starting on April 1, 2017, and ending on March 1, 2020; and (2) the FTB, in the amount of \$14,301.84 as stated in Claim No. 7-2, to be paid in monthly payments at 4% per annum of \$422.00 starting on April 1, 2017, and ending on March 1, 2020. FAP at 4-5.

The Debtor lists the following classes of claims that are secured against the Buckingham Property:

- **Class 1: Los Angeles County Tax Collector, as a first priority creditor, in the amount of \$34,134.26:**
 - Class 1 is not impaired and will be paid in the following two installments: (1) \$16,067.13 on December 10, 2016, and (2) \$16,067.13 on April 10, 2017;
 - The Debtor's mortgage lender, Kinecta Federal Credit Union ("Kinecta"), has an escrow account, from which both installments will be paid when due;

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- **Class 2: Kinecta's first mortgage, as a second priority creditor, in the total amount of \$1,650,335.75:**
 - Class 2 is impaired and can vote on the Plan;
 - Debtor will pay regular payments of \$10,898.13 per month, pursuant to the applicable loan documents and on the principal amount of \$1,562,581.10, continuing for the balance of the loan;
 - With respect to the arrears owed in the amount of \$87,754.65, the Debtor shall pay \$1,462.58 per month over sixty (60) months;
- **Class 3: Kinecta's second mortgage, as a third priority creditor, in the amount of \$204,835.00:**
 - Class 3 is not impaired;
 - The Debtor will pay regular payments of \$800.00 per month pursuant to the terms and conditions of the applicable agreement with Kinecta, continuing for the balance of the loan;
- **Class 4: Nourian, as a fourth priority creditor, in the amount of \$225,000.00:**
 - Class 4 is impaired and can vote on the Plan;
 - Tala Jewelers pays Nourian \$2,500 per month for a period twelve (12) months, starting on July 30, 2016 and pursuant to the plan confirmation in the Tala Jewelers Case;
 - Upon receipt of the twelve (12) payments, the unpaid balance will be due and payable, at which time the Debtor, Tala Jewelers, and Nourian will negotiate a repayment in good faith;
 - The First Amended Disclosure Statement concludes that there is a strong argument that the Debtor received reasonably equivalent value in exchange for Nourian's loan and will not pursue a potential avoidance action against the Nourian deed as in the best interests of the estate when considering the costs of pursuing an avoidance action.

FAP at 5-8.

The Debtor lists the following claim secured against the personal property of a 2016 Fiat 500X:

- **Class 5: Santander Consumer USA, Inc. ("Santander"), as a first priority creditor, in the amount of \$27,507.99:**

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- Class 5 is not impaired;
- The Debtor will pay regular payments of \$642.42 per month pursuant to the applicable retail installment contract.

FAP at 8-9.

The Debtor list the following claim secured against the personal property of a 2011 BMW 750i ("Vehicle"):

- **Class 6: Lighting Fast Finance ("Lighting"), as a first priority creditor, in the amount of \$29,991.00:**
 - Class 6 is not impaired;
 - The Debtor will make regular payments of \$1,014.00 per month pursuant to the applicable installment sale contract;
 - Tala Jewelers makes the monthly payments on the Vehicle on behalf of the debtor as a fringe benefit in addition to his income and as part of the Debtor's compensation package.

FAP at 9-10.

Class 7 constitutes the Debtor's general unsecured claims ("General Unsecured Claims") in the amount of \$248,441.79. FAP at 10-11. Class 7 is impaired and includes the disputed claims of David & Linda Strause [Claim No. 1-1], Colin Strause [Claim No. 2-1], Eric Torres [Claim No. 3-1], and Tamas Arato [Claim No. 10-1] (collectively "Disputed Claims"), totaling \$181,316.94. The total proposed distribution amount is \$10,000. All non-disputed Class 7 claims, totaling \$67,124.85 will receive approximately 4.02% of their allowed claim within fifteen (15) days of the Effective Date, i.e. \$2,701.77. With respect to the Disputed Claims, funds in the amount of \$7,298.23 will be segregated and held to pay any Disputed Claims if and when they become allowed. If a Disputed Claim is disallowed the portion originally set aside for the Disputed Claim will be distributed pro-rate among all allowed Class 7 claims.

Class 8 constitutes the Debtor as an interest holder. FAP at 12. The Debtor will continue to hold an interest in himself after the Effective Date.

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The Debtor intends to fund the plan with \$50,000 contributed ("Initial Contribution") by Stephen Yenikomshian ("Contributor"), the Debtor's father-in-law. FAP at 12. The Contributor will provide whatever additional funds necessary to pay the professional fees and expenses within five (5) days of the Court's order approving professional fees and expenses. The Debtor will act as the disbursing agent under the First Amended Plan and serve without bond and receive no compensation for distribution services.

The deadline to file objections to claims will be 120 days after the Effective Date. The Debtor states that there is no risk as to the Initial Contribution because it will be deposited with Debtor's counsel in advance of the confirmation hearing. FADS at 23. The Debtor admits risk to future payments because of the financial condition of the Debtor and his family. The Debtor contends that, if necessary, evidence will be presented at the confirmation hearing that the Debtor's family has the financial wherewithal to assist the Debtor with his obligations under the First Amended Plan and will commit to do so.

The Debtor will reject a nonresidential real property lease for the Debtor's non-filing spouse's former business premises located at 1306 Montana Ave., Santa Monica, CA 90403 ("Montana Lease"). The Montana Lease is in the name of the Debtor and non-debtor Kevork Atmadjian. Kevork Atmadjian and / or Tala Jewelers will continue making payments on the Montana Lease.

The Debtor does not anticipate any substantial tax liability with the implementation of the First Amended Plan. The Debtor will reduce its tax attributes by the amount of any cancellation of indebtedness ("COD") income that is realized as a result of the Plan. COD income refers to income in the excess of the amount of a taxpayer's indebtedness that is discharged over the amount or value of the consideration exchanged therefor.

The Debtor attaches a liquidation analysis to the First Amended Plan ("Liquidation Analysis") representing that under a chapter 7 liquidation, unsecured creditors would receive nothing, whereas under the First Amended Plan, unsecured creditors would receive approximately 4.025% of their respective claims. FAP at 34. Regarding feasibility, the Debtor submits he will have sufficient cash on the Effective Date to pay all the claims and expenses entitled to payment and the Debtor's family

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has committed to assist the Debtor, to the extent necessary, in executing future payments under the First Amended Plan.

Motion

The Debtor filed the Motion on March 28, 2017, arguing that the First Amended Plan complies with all the applicable provisions of 11 U.S.C. § 1129. Doc. No. 129. The Ballot Summary indicates that Classes 2, 3, 4, and 6 voted to accept the First Amended Plan. Doc. No. 128. No class voted to reject. *Id.* Furthermore, as of the date of this tentative ruling, there is no opposition to the Motion or objection to the First Amended Plan's confirmation.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the First Amended Plan complies with all applicable provisions of § 1129, and the Court HEREBY CONFIRMS the First Amended Plan. The Court finds that the Debtor sufficiently fulfilled the condition approval of the First Amended Disclosure Statement by including additional information regarding the Nourian deed and submitting an appraisal report in support of the Buckingham Property's fair market value. *See* Doc. No. 121, Ex. F. The Court finds the lack of additional objections as consent to confirmation of the First Amended Plan. LBR 9013-1(h).

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

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Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." Whether claims are "substantially similar" is a question of fact, reviewable under a clearly erroneous standard. *In re Johnston*, 21 F.3d 323 (9th Cir. 1994). In such context, the reasons for different treatment and separate classification must be closely scrutinized. *In re Acequia*, 787 F.2d 1352, 1364 (9th Cir. 1986). Factors guiding the factual review include whether the discrimination is reasonably based, whether the debtor can reorganize without it, whether the discrimination is fair and proposed in good faith, or whether the degree of discrimination is directly related to the basis or rationale for the discrimination. *In re Tucson Self-Storage, Inc.*, 166 B.R. 892, 897 (B.A.P. 9th Cir. 1994) (quoting *In re Wolff*, 22 B.R. 510, 512 (B.A.P. 9th Cir. 1982)).

The First Amended Plan designates eight classes of claims. Class 1 consists of the Los Angeles County Tax Claim as first priority on the Buckingham Property; Class 2 is Kinecta's second priority claim secured by the Buckingham Property; Class 3 is Kinecta's third priority claim secured by the Buckingham Property; Class 4 is the Nourian deed; Classes 5 and 6 are the claims of Santander and Lighting, secured by interests in the respective vehicles; Class 7 consists of the General Unsecured Claims; and Class 8 constitutes the Debtor's own interest. The Court finds sufficient evidence that the separation of each class is reasonably based and in good faith, satisfying § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience." Section 1122(b) does not apply to the First Amended Plan.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interests." The First Amended Plan classifies all claims and interests other than the specified priority claims in a manner consistent

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with § 1122. Thus, the First Amended Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that a plan "specify any class of claims or interests that is not impaired under the Plan." Here, the First Amended Plan specifies the interests of Classes 1, 5, and 6 as not impaired, satisfying § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan." Classes 2, 3, 4, and 7 are specified as impaired classes. Thus, the First Amended Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The First Amended Plan provides the same treatment for each claim in a particular class. Thus, the First Amended Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the First Amended Plan "provide adequate means for the plan's implementation." The First Amended Disclosure Statement represents that the Contributor will provide and deposit \$50,000 with the Debtor's counsel in advance of the confirmation hearing, in order to initially fund the First Amended Plan. FADS at 23. The Contributor will also provide additional compensation for future payments, if necessary. *Id.* Based on these representations and lack of opposition, the Court finds sufficient evidence that the First Amended Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

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Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends." This requirement is inapplicable because the Debtor is an individual.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the First Amended Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders. This requirement is inapplicable because the Debtor is an individual.

10. Section 1123(b)

Section 1123(b) sets forth six specific provisions that are permitted, but not required, in a plan of reorganization. Three of the specified six provisions are contained in the Third Amended Plan.

The First Amended Plan impairs Classes 2, 3, 4, and 7. *See* 11 U.S.C. § 1123 (b)(1). Further, the First Amended Plan does not impair Classes 1, 5, and 6. *Id.*

The First Amended Plan modifies the rights of secured creditor Kinecta's interests. *See* 11 U.S.C. § 1123(b)(5).

The First Amended Plan does contain other provisions not expressly referred to in 11 U.S.C. § 1123(b), which are not inconsistent with the applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. 1123(b)(6).

In sum, the First Amended Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

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Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Debtor obtained Court approval of the employment of a professional person. *See* Doc. No. 92 (order authorizing Ovsanna Takvoryan as general bankruptcy counsel). Therefore, the Debtor satisfies the requirements of § 1129(a)(2).

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted). Under Fed. R. Bankr. P. 3015(f), the Court is not required to receive evidence as to good faith if no party objects to confirmation. Here, there is no evidence indicating bad faith by the Debtor or a purpose inconsistent with resolving the Debtor's obligations to its creditors in accordance with the Bankruptcy Code. Thus, the First Amended Plan satisfies § 1129(a)(3).

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." The First Amended Plan indicates that none of the professionals employed, or previously employed, will receive compensation without the Court's approval. FAP at 3. Thus, the First Amended Plan satisfies § 1129(a)(4).

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SECTION 1129(A)(5)**

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Section 1129(a)(5) requires that a plan discloses "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor. Here, this section does not apply because the Debtor is an individual.

SECTION 1129(A)(6)

Section 1129(a)(6) requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan. Here, the Debtor is not subject to the jurisdiction of any regulatory commission regarding rates leaving this section inapplicable to the First Amended Plan. Thus, the First Amended Plan is consistent with § 1129(a)(6).

SECTION 1129(A)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date." Here, each impaired creditor that voted, accepted the plan. Moreover, the Liquidation Analysis represents that the General Unsecured Claims would receive nothing under a chapter 7 distribution, in contrast to receiving approximately 4.025% under the First Amended Plan. Thus, the First Amended Plan satisfies § 1129(a)(7).

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is

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not impaired. "The holder of a claim or interest allowed . . . may accept or reject a plan." 11 U.S.C. § 1126(a). An "allowed" claim or interest must actually be filed or be deemed filed. For a claim be deemed filed, the claim or interest must be listed in the debtor's chapter 11 schedules, but not specified as disputed, contingent, or unliquidated. 11 U.S.C. § 1111(a). If there has been an objection to a claim, the claim holder will not be able to vote on the plan unless the court has settled the claim in the claimholder's favor. *In re M. Long Arabians*, 103 B.R. 211, 215 (B.A.P. 9th Cir. 1989). However, FRBP 3018(b) allows the court to temporarily allow the claim or interest in an amount which the court deemed proper for the purpose of accepting or rejecting a plan. Pursuant to § 1126(c), "A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan." 11 U.S.C. § 1126(c). The holder of a claim must affirmatively accept the plan. *In re M. Long Arabians*, 103 B.R. at 216. Here, each impaired class that voted, accepted the plan. Therefore, the First Amended Plan satisfies § 1129(a)(8).

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment. Holders of administrative and priority claims are treated pursuant to § 1129(a)(9). Here, Takvoryan, Casey, the IRS, and the FTB are the applicable claims in this section. The IRS and FTB claims will receive deferred cash payments in monthly installments equal to the allowed amounts of each respective claim. Additionally, Takvoryan and Casey will receive the full amount of their respective claims upon Court approval. None of the claims in this section filed an opposition. Thus, the First Amended Plan satisfies § 1129(a)(9).

SECTION 1129(A)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan, determined without including any acceptance of the plan by any insider. Here, impaired Classes 2, 3, and 4, voted to accept the First Amended Plan. Thus, the First Amended Plan satisfies § 1129(a)(10).

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SECTION 1129(A)(11)**

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Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Based upon its review of the First Amended Plan, the Court finds that the First Amended Plan is sufficient to satisfy the feasibility requirement. The March MOR [Doc. No. 130] indicates that the Debtor received \$18,500.00 and the First Amended Plan provides that the Contributor will make further contributions to the Debtor, as necessary, in order to effectuate the First Amended Plan. The Court finds sufficient evidence to show that the First Amended Plan is not likely to be followed by liquidation or further financial reorganization by the Debtor. Thus, the First Amended Plan satisfies § 1129(a)(11).

SECTION 1129(A)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date. The First Amended Plan proposes to pay UST fees quarterly as required by 11 U.S.C. § 1930(a)(6). *See* FAP at 20. Thus, the First Amended Plan satisfies § 1129(a)(12).

SECTION 1129(A)(13)

Section 1129(a)(13) contains requirements pertaining to the payment of retirement benefits. This case does not require payment of retirement benefits; thus, § 1129(a)(13) does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14) contains requirements pertaining to the payment of domestic support obligations. The Debtor is not required by a judicial or administrative order, or by a statute, to pay a domestic support obligation; thus, §

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CONT... **Arto Atmadjian**
1129(a)(14) does not apply.

Chapter 11

SECTION 1129(A)(15)

Section 1129(a)(15) imposes certain requirements upon individual debtors if the holder of an unsecured claim objects to confirmation of the plan. The Debtor must either pay the present value of the unsecured creditors' claims or distribute property equal to the Debtor's projected monthly disposable income. Here, the Court set a deadline of April 11, 2017 to file an objection. Doc. No. 117. As of the date of this tentative ruling, no holders of any unsecured claims filed an objection. Thus, § 1129(a)(15) is satisfied.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." This requirement does not apply to the Debtor. Thus, The First Amended Plan satisfies § 1129(a)(16).

SECTION 1129(D)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party-in-interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the Court not confirm the First Amended Plan on the grounds that its purpose is the avoidance of taxes. No securities are issued under the First Amended Plan. Thus, the First Amended Plan satisfies § 1129(d).

Based on the foregoing, the Motion is HEREBY GRANTED and the First Amended Plan is CONFIRMED. The Court will hold a post-confirmation status conference on **August 30, 2017 at 10:00 a.m.** The Debtor is ordered to file a status report no later than fourteen (14) days prior to the conference.

The Debtor shall upload a conforming order with 7 days of the hearing.

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CONT... Arto Atmadjian

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Arto Atmadjian

Represented By

Kristine Theodesia Takvoryan

Ovsanna Takvoryan

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10:00 AM

2:17-11856 Kendra Brown

Chapter 7

#2.00 Hearing
RE: [8] Notice of motion and motion for relief from the automatic stay with
supporting declarations UNLAWFUL DETAINER

fr. 4-10-17

Docket 8

Tentative Ruling:

5/1/2017: For the reasons set forth below, GRANT Motion.

Tentative Ruling:

The Court previously continued this Motion from April 10, 2017 at 10:00 a.m. to May 2, 2017 at 10:00 a.m. because the Movant set the Motion on shortened notice per this Court's procedures, but failed to properly serve the pro se Debtor. The Court required the Movant to give notice of the continued hearing to all interested parties and file a proof of service of the same by no later than April 13, 2017. *See* Doc. No. 12. On April 12, 2017, the Movant filed notice of the continued hearing date with a proof of service indicating service via posting and first class mail on the Debtor. Doc. No. 11. Upon review, the Court finds sufficient notice and service of the Motion.

The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by the Court's order [Doc. No. 12] is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

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CONT...

Kendra Brown

Chapter 7

The Debtor continues to occupy the property after failing to pay the monthly rent of \$1,350 beginning on January 1, 2017. The Movant served a notice to quit on February 5, 2017.

This Motion has been filed to allow the Movant to proceed with an unlawful detainer proceeding in state court. An unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived so as to avoid further delay in any subsequently filed unlawful detainer proceeding. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

REVISED SUBMISSION PROCEDURE

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Kendra Brown

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-12447 Amir Akbari

Chapter 7

#3.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW X1; VIN: WBXHT3C33GP883744 . (Silverman, Timothy)

Docket 18

Tentative Ruling:

5/1/2017

Tentative Ruling:

As a preliminary note, the Bankruptcy Court retains jurisdiction in this case for the purposes of adjudicating the Motion and effectuating the dismissal. *See Aheong v. Mellon Mortgage Co. (In re Aheong)*, 267 B.R. 233, 239-240 & n. 8 (9th Cir. BAP 2002) (a bankruptcy court is authorized to grant relief from the automatic stay after the dismissal of a chapter 7 bankruptcy case); *see also In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). Further, the Dismissal order states that the Court retains jurisdiction for any issues arising under 11 U.S.C. §362. Doc. No. 25.

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Court notes that the Debtor filed a notice of withdrawal of the Debtor's previously filed opposition. Doc. No. 24.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective

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CONT... Amir Akbari

Chapter 7

reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived as Movant regained possession of the subject vehicle pre-petition on February 27, 2017. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Amir Akbari

Represented By
Aidin Okhovat

Trustee(s):

Richard K Diamond (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-13232 Noel Antonio, Jr.

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 LEXUS ES, VIN JTHBJ46G072074324 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt,

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CONT... Noel Antonio, Jr.

Chapter 7

the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Noel Antonio Jr.

Represented By
Raymond Perez

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-11038 Sidney R Allen

Chapter 7

#5.00 HearingRE: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 24714 Avignon Dr, Valencia, CA 91355 . (Jafarnia, Merdaud)

Docket 16

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (8th Cir. BAP 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$600,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$636,782.18. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the

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CONT... Sidney R Allen

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bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sidney R Allen

Represented By
Julie J Villalobos

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:17-13103 Carlos Rony Arguello

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 NISSAN VERSA, VIN 3N1CE2CP4FL372085 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the debtor stated an intention to surrender the property to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative**

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CONT... Carlos Rony Arguello Chapter 7

ruling and appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Carlos Rony Arguello

Represented By
Daniel King

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Los Angeles
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Hearing Room 1568

10:00 AM

2:17-13594 Kaitori Arielle Vasquez

Chapter 7

#7.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1110 S. Philadelphia Street, # 1109, Ontario, Ca . (Long, Helen)

Docket 11

Tentative Ruling:

The Motion is CONTINUED to **May 22, 2017**, at **10:00 a.m.** Movant set the Motion on shortened notice per this court's procedures, but failed to properly serve the pro se Debtor. Per this court's procedures concerning matters set on shortened notice for residential unlawful detainer actions, the Movant is required to serve the Debtor either by posting or personal service only. The proof of service for the Motion indicates that the Movant served the Debtor by overnight mail. *See* Doc. No. 11 at 12. Movant is to give notice of the continued hearing to all interested parties and file a proof of service of the same by no later than **May 3, 2017**.

Party Information

Debtor(s):

Kaitori Arielle Vasquez	Pro Se
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Trustee(s):

Richard K Diamond (TR)	Pro Se
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Hearing Room 1568

10:00 AM

2:17-14535 Domina Shawnte Haynes

Chapter 7

#8.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6714 11th Avenue #9, Los Angeles, CA 90043 . (Felman, Edward)

Docket 7

Tentative Ruling:

Tentative Ruling:

As a preliminary note, the Bankruptcy Court retains jurisdiction in this case for the purposes of adjudicating the Motion and effectuating the dismissal. *See Aheong v. Mellon Mortgage Co. (In re Aheong)*, 267 B.R. 233, 239-240 & n. 8 (9th Cir. BAP 2002) (a bankruptcy court is authorized to grant relief from the automatic stay after the dismissal of a chapter 7 bankruptcy case); *see also In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). Further, the Dismissal order states that the Court retains jurisdiction for any issues arising under 11 U.S.C. §362. Doc. No. 9.

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after failing to pay the monthly rent of \$849.00 beginning on May 5, 2016. The Movant filed an unlawful detainer action on January 27, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward

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CONT... Domina Shawnte Haynes

Chapter 7

because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived so as to avoid further delay in the unlawful detainer proceeding. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Domina Shawnte Haynes

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se